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14 ARISTA NETWORKS, INC.

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN JOSE DIVISION

18 CISCO SYSTEMS, INC.,

19 Plaintiff,

20 v.

21 ARISTA NETWORKS, INC.,

22 Defendant.
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Case No. 5:14-cv-05344-BLF (NC)

**ARISTA'S ADMINISTRATIVE MOTION
TO MAINTAIN UNDER SEAL/REDACT
PORTIONS OF PRETRIAL
CONFERENCE TRANSCRIPT**

Judge: Hon. Beth Labson Freeman

Date Filed: December 5, 2014

Trial Date: November 21, 2016

Pursuant to the Northern District of California's Civil Local Rules 7-11 and 79-5(d)-(e), and General Order 59, Defendant Arista Networks, Inc. respectfully submits this administrative motion to maintain under seal and redact portions of the pretrial conference transcript that disclose confidential portions of an ITC opinion.

Arista seeks to maintain under seal and redact the following portions of the pretrial conference transcript:

- page 59 lines 22–25
- page 60 lines 1–2
- page 62 lines 12–16
- page 65 lines 11–17
- page 66 lines 2–4 and 8–17
- page 93 lines 19–20 and 23

On November 16, 2016, Arista filed an administrative motion and supporting declaration to seal/redact portions of the Pretrial Conference Transcript. ECF 662-1. This Court granted the sealing request on November 29, 2016. ECF 688. Arista's motion and the supporting declaration inadvertently misstated the procedural posture of Cisco and Arista's cross-appeals of an ITC Opinion now pending before the Federal Circuit Court of Appeals. Arista files this motion and the supporting Declaration of Eduardo E. Santacana to correct the misstatement and to request that the Court confirm its Order sealing the subject portions of the Pretrial Conference Transcript, notwithstanding the error.

On November 16, 2016, Arista filed an administrative motion to seal/redact portions of the Pretrial Conference Transcript that disclosed confidential portions of the International Trade Commission's Final Commission Opinion in Investigation No. 337-TA-944, *In the Matter of Certain Network Devices, Related Software and Components Thereof (I)*. ECF 662. Arista's motion and the accompanying declaration explained that certain information was redacted from the Public Commission Opinion, which was attached to the declaration in support of the administrative motion. ECF 662-3.

1 Cisco and Arista both appealed the ITC Opinion to the Federal Circuit in August 2016,
2 and the two appeals were consolidated under lead case number 16-2563. On November 2, 2016,
3 Cisco filed a “Motion to Mark More than 15 Words Confidential and Make Certain Information
4 Public” seeking an order from the Federal Circuit making certain pages of the ITC Opinion “part
5 of the public record in [the] appeal.” Case No. 16-2563, Doc. 24-1 (Fed. Cir.). On November 10,
6 2016, the ITC filed a response to Cisco’s motion, in which it objected to Cisco’s request on the
7 grounds that any declassification decision should be made by the Commission, not the Federal
8 Circuit. It was in that response that the Commission noted that the matter was “of great
9 institutional concern” to the ITC. Case No. 16-2563, Doc. 26 (Fed. Cir.). The Commission asked
10 that the Federal Circuit remand the matter to the Commission. *Id.* at 1.

11 In its reply brief in support of its motion asking the Federal Circuit to unseal portions of
12 the ITC Opinion, Cisco referred to the Pretrial Conference held on November 3, 2016, in this
13 case. Cisco argued that Arista could not maintain the confidentiality of the ITC Opinion because
14 “[a] district court judge presiding over related litigation recently discussed” the ITC Opinion “in
15 open court,” thereby waiving any interest Arista has in the confidentiality of the subject portions
16 of the ITC Opinion. Case No. 16-2563, Doc. 30-1 (Fed. Cir.).

17 Page 1 line 28 through page 2 line 3 of the November 16 administrative motion and
18 paragraph 6 of the supporting declaration misstated that the Federal Circuit remanded to the
19 Commission a request by Cisco to unseal portions of the ITC Opinion. The Federal Circuit has,
20 in fact, not ruled on Cisco’s request to unseal the ITC Opinion, nor has it remanded the matter to
21 the Commission. The document quoted from and attached to the supporting declaration was, in
22 fact, the ITC’s Response to Cisco’s Motion. ECF 662-4.

23 Arista’s misstatement was unintentional. Arista first became aware of the error yesterday,
24 when it learned from Arista’s ITC counsel that Cisco filed a Federal Rule of Appellate Procedure
25 28(j) letter before the Federal Circuit stating that Arista made misrepresentations to this Court to
26 secure a sealing order. Case No. 16-2563, Doc. 35-1 (Fed. Cir.). Cisco did not contact either
27 Arista’s counsel in this case or Arista’s counsel in the Federal Circuit to bring this inadvertent
28 error to Arista’s attention before filing its letter.

1 Notwithstanding this error, Arista requests that this Court maintain under seal the portions
2 of the pretrial conference transcript this Court ordered sealed on November 29, 2016. Good cause
3 continues to support sealing those portions because they discuss portions of the ITC's Final
4 Commission Opinion in Investigation No. 337-TA-944, *In the Matter of Certain Network*
5 *Devices, Related Software and Components Thereof (I)* that are under seal.

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7 Dated: December 13, 2016

KEKER & VAN NEST LLP

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9 By: /s/ Eduardo E. Santacana
10 EDUARDO E. SANTACANA

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12 Attorney for Defendant
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